

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 12. OFFICE OF THE SECRETARY OF STATE

[R07-188]

PREAMBLE

1. Sections Affected

Article 8
R2-12-801
R2-12-802
R2-12-803
R2-12-804
R2-12-805
R2-12-806
R2-12-807
R2-12-808
R2-12-809
R2-12-810
R2-12-811

Rulemaking Action

New Article
New Section
New Section
New Section
New Section
New Section
New Section
New Section
New Section
New Section
New Section
New Section

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. Title 23, Chapter 3, Article 4

Implementing statute: A.R.S. §§ 23-564(D), 23-568(A), and 23-575(E)(4) and (F)

3. A list of all previous notices appearing in the *Register* addressing the proposed rule:

Notice of Rulemaking Docket Opening: 11 A.A.R. 2743, July 22, 2006

Notice of Rulemaking Docket Opening: 13 A.A.R. 39, January 5, 2007

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Kevin Tyne
Address: Arizona Secretary of State
1700 W. Washington
Phoenix, AZ 85007
Telephone: (602) 542-4919
Fax: (602) 542-1575
E-mail: ktyne@azsos.gov
or
Name: Gene Palma
Address: Arizona Secretary of State
1700 W. Washington
Phoenix, AZ 85007
Telephone: (602) 542-3060

Notices of Proposed Rulemaking

Fax: (602) 542-7386
E-mail: gpalma@azsos.gov

5. An explanation of the rule, including the agency's reasons for initiating the rule:

In accordance with A.R.S. §§ 23-564(D), 23-568(A), and 23-575(E)(4) and (F), the Secretary of State shall adopt rules to implement A.R.S. Title 23, Chapter 3, Article 4 and pursuant to Title 41, Chapter 6.

6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

None

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

There will be a positive impact on small business and consumers. The proposed registration of Professional Employer Organizations will give businesses and consumers more confidence in Professional Employer Organizations. Additionally, the Secretary of State's ability to regulate the PEO industry will enhance protection of businesses and workers in Arizona and prevent the unregistered operation of a PEO.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Kevin Tyne
Address: Arizona Secretary of State
1700 W. Washington
Phoenix, AZ 85007
Telephone: (602) 542-4919
Fax: (602) 542-1575
E-mail: ktyne@azsos.gov

or

Name: Gene Palma
Address: Arizona Secretary of State
1700 W. Washington
Phoenix, AZ 85007
Telephone: (602) 542-3060
Fax: (602) 542-7386
E-mail: gpalma@azsos.gov

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

The Secretary of State does not plan to conduct an oral proceeding on the proposed rules unless a written request for an oral proceeding is submitted to one of the individuals named in item #4 within 30 days after this notice is published. The Secretary of State will accept written comments on the proposed rules for 30 days after the date of this publication. All written comments must be submitted to one of the individuals named in item #4.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 12. OFFICE OF THE SECRETARY OF STATE

ARTICLE 8. PROFESSIONAL EMPLOYER ORGANIZATIONS

Section

<u>R2-12-801.</u>	<u>Definitions</u>
<u>R2-12-802.</u>	<u>Registration</u>
<u>R2-12-803.</u>	<u>Limited Registration</u>
<u>R2-12-804.</u>	<u>Late Registration</u>
<u>R2-12-805.</u>	<u>Registration Fees</u>
<u>R2-12-806.</u>	<u>Complaints</u>
<u>R2-12-807.</u>	<u>Investigations</u>
<u>R2-12-808.</u>	<u>Administrative Hearings</u>
<u>R2-12-809.</u>	<u>Restriction, Revocation or Probation of Registration</u>
<u>R2-12-810.</u>	<u>Requirements for Reinstatement of a Restricted, Revoked or Probationary Registration After the Specified Term of Discipline</u>
<u>R2-12-811.</u>	<u>Duties and Responsibilities</u>

ARTICLE 8. PROFESSIONAL EMPLOYER ORGANIZATIONS

R2-12-801. Definitions

Unless the context otherwise requires, the definitions of terms contained in A.R.S. § 23-561 are applicable in this Article. Additionally, the following definitions apply in this Article, unless otherwise specified in these rules:

1. "Application" means such forms, materials, fees, and information required to enable the Secretary of State to ascertain if an applicant meets the requirements of registration.
2. "Common Control" means having charge of those activities that are inherent in operating a PEO or PEO group.
3. "Controlling Person" means any organization or person that possesses, directly or indirectly, through financial ownership or otherwise, the power to direct, or cause the direction of, the management or policies of the PEO.
4. "PEO" means professional employer organization.
5. "Parent PEO" means an organization or person that holds common control over two or more PEOs and is the designated entity under which a group registration is filed.
6. "Professional Employer Group" means two or more professional employer organizations that are under common control of a parent PEO and that operate under a group registration issued under A.R.S. § 23-566.

R2-12-802. Registration

- A. Each applicant shall apply to the Secretary of State in writing upon forms available from the Secretary of State. Each completed application shall contain the required documentation identified in each type of registration pursuant to A.R.S. §§ 23-563, 23-564, 23-565, 23-566 and 23-567 and each application shall be verified by oath or affidavit by the applicant, and shall be accompanied by the fees required by these rules.
- B. A certificate shall be issued to an applicant who submits a complete application if the Secretary of State determines that the applicant meets the requirements of registration.
- C. A written notice of denial of registration shall be provided to an applicant who submits a complete application if the Secretary of State determines that the applicant does not meet the requirements of registration.
- D. A written notice shall be provided to an applicant who submits an incomplete application. This notice shall advise the applicant that the application is incomplete and that the application is denied, unless the applicant corrects the deficiencies within 30 days or such greater time as specifically provided in the notice of deficiency and otherwise meets all requirements for registration as determined by the Secretary of State.
- E. An applicant shall respond within 30 days to all requests of the Secretary of State for further information regarding an application. Failure to provide the requested information within 30 days or such greater time as specifically provided in the Secretary of State's request shall be grounds for the denial of an application.
- F. An applicant who is required to deposit a bond, an irrevocable letter of credit or securities in a depository, to fulfill the requirements of A.R.S. § 23-569(A)(2) shall submit the bond, an irrevocable letter of credit or securities with the Secretary of State's office.
- G. Upon receiving a bond, an irrevocable letter of credit or securities the Secretary of State's office shall deposit the asset with the State of Arizona Treasurer's Office who shall confirm the transaction by issuing documentation identifying the date and type of deposit.

R2-12-803. Limited Registration

- A. An applicant for limited registration must provide with its application:
 1. A copy of the statutory and regulatory PEO requirements of another state in which the PEO applicant is registered and which govern that PEO's out-of-state registration. The governing statutory and regulatory requirements from the

Notices of Proposed Rulemaking

other state must be substantially similar to the PEO requirements of Arizona as determined by the Arizona Secretary of State.

2. A certificate or documentation issued by that state's licensing agency showing that the applicant's registration is current and valid and discloses whether the applicant has been subject to any disciplinary actions in that state.
3. A statement signed by a controlling person of the PEO declaring that the PEO meets the requirements of limited registration as provided in A.R.S. § 23-567(A)(1)-(4).

R2-12-804. Late Registration

If renewal registration is not received by the Secretary of State within 120 days after the applicant's completed fiscal year, the applicant shall pay the established registration renewal fee and a late fee of \$250.

R2-12-805. Registration Fees

A. A PEO registering with the Secretary of State shall pay the following fees:

1. If applying for initial registration:
 - a. The initial registration fee shall be \$1,000; and
 - b. The renewal registration fee shall be \$1,000.
2. If applying for group registration:
 - a. The initial group registration fee shall be \$1,000 for the parent employer organization and \$500 for each member of the group; and
 - b. The group registration renewal fee shall be \$1,000 for the parent organization and \$500 for each member of the group.
3. If applying for limited registration:
 - a. The initial limited registration fee shall be \$1,000; and
 - b. The limited registration renewal fee shall be \$1,000.

B. In addition to the fees required above:

1. A reinstatement fee of \$500 shall be assessed to any applicant requesting the reinstatement of a registration that has been revoked or whose probation has expired.
2. The parent employer organization and each PEO under a group registration shall be assessed a late fee of \$250 and a reinstatement fee of \$500, or both, should the group registration renewal not be filed within the statutory time-frame.
3. A fee of \$50 shall be assessed to any registrant submitting a change in the registration information on file with the Secretary.

C. All fees are nonrefundable.

R2-12-806. Complaints

A. Any person may file a complaint with the Office of the Secretary of State regarding a PEO. The Secretary of State shall receive any complaints and shall investigate and determine whether action is necessary involving allegations of any misconduct as provided in A.R.S. § 23-575 and these rules.

1. A complaint must be in writing;
2. The complainant shall be clearly identified. If an entity files a complaint an individual shall be identified in the complaint that will serve as a contact person while the investigation of the complaint is conducted;
3. The name of the PEO who has allegedly committed the misconduct must be clearly identified;
4. The nature of the misconduct and the circumstances surrounding the alleged misconduct shall be clearly identified; and
5. Documentation, if any, supporting the allegations shall accompany the complaint.

B. Upon receipt of the complaint the Secretary of State shall mail a copy of the complaint to the PEO in question and request a written response.

C. If a PEO fails to respond within 30 days to a request for information during an investigation the Secretary of State may take action pursuant to A.R.S. § 23-575(E).

R2-12-807. Investigations

A. The Secretary of State or its representative may request information, perform an investigation, audit, or review documents necessary to determine whether a PEO has violated any provision of A.R.S. §§ 23-563 through 23-569 or 23-575 or these rules.

B. The Secretary of State may assess reasonable costs associated with such an investigation and civil adjudication. If a civil adjudication results from the investigation and the civil adjudication becomes final (either sustained on appeal or not appealed), the Secretary of State may assess the reasonable costs of the civil adjudication and investigation to the registered PEO.

C. Information gathered pursuant to an investigation is confidential and not open to public inspection pursuant to A.R.S. § 23-563(C).

D. The disciplinary record of a PEO is a matter of public record as allowed by law.

R2-12-808. Administrative Hearings

If the Secretary of State denies an application for registration, or restricts, revokes or refuses to renew a registration, or if the Secretary of State places a registrant on probation, upon notification, the registrant may appeal the decision of the Secretary of State pursuant to the procedure provided in A.R.S. Title 41, Chapter 6, Article 10.

R2-12-809. Restriction, Revocation or Probation of Registration

- A. If a PEO fails to comply with any of the requirements of registration the Secretary of State may restrict, revoke or place the PEO on probation until such time as the PEO comes into compliance with the registration requirements.
- B. If the PEO fails to cure any deficiency within 150 days of the registration renewal date, the Secretary of State may revoke the registration of an applicant.
- C. If a PEO fails to comply with any of the duties and responsibilities identified in R2-12-811 the Secretary of State may take action pursuant to A.R.S. § 23-575(F)(E) until such time as the PEO comes into compliance.
- D. Upon restriction of a registration, the holder of the restricted registration shall:
 - 1. Immediately cease soliciting clients for PEO services.
 - 2. Notify each client of the PEO of the PEO's restriction within five days after the effective date of the restriction.
- E. Upon revocation of a registration, the holder of the revoked registration shall:
 - 1. Cease all PEO operations immediately.
 - 2. Notify each client of the PEO of the PEO's revocation within two days after the effective date of revocation.
- F. Upon the completion of a period of registration restriction or the reinstatement of a registration that was revoked the PEO shall be placed on probation for one year.

R2-12- 810. Requirements for Reinstatement of a Restricted, Revoked or Probationary Registration After the Specified Term of Discipline

- A. Unless otherwise specified in a disciplinary order imposing revocation, the disciplined registrant may, after two years from the date of the disciplinary order, petition for the reinstatement of its registration.
- B. Unless otherwise specified in a disciplinary order a PEO whose registration has been restricted or put on probation the disciplined registrant shall, at the end of the restriction, or probation, petition for the release from the conditions of restriction or probation.
- C. Unless otherwise provided by a disciplinary order, an applicant who applies for reinstatement of a registration after the specified term of restriction or revocation of the registration shall:
 - 1. Submit an application for registration complete with all supporting documents as is required when making an initial application for registration demonstrating the applicant meets all current qualifications for registration and compliance with requirements and conditions of registration reinstatement;
 - 2. Submit a Petition for Release from the imposed disciplinary order that documents that all conditions of reinstatement and requirements for re-registration have been fulfilled.
 - 3. Pay the established registration renewal fee, release petition and the reinstatement fee;
 - 4. Provide documentation to the Secretary of State to clearly demonstrate the applicant is statutorily qualified to be reinstated to engage in offering PEO services; and
 - 5. Pay all monies due.

R2-12- 811. Duties And Responsibilities

- 1. An applicant or registered PEO shall notify the Secretary of State in writing within 30 days of any conviction, judgment, guilty plea or no contest plea of the applicant or any of the applicant's controlling persons for any violation listed in A.R.S. § 23-575.
- 2. An applicant or registered PEO shall notify the Secretary of State in writing within 30 days of any final action by a state or federal regulatory agency for violations related to the operation of a PEO.
- 3. An applicant or registered PEO shall notify the Secretary of State in writing within 30 days of any determination by any court of competent jurisdiction, including federal courts, located in any state, that the applicant or any of the applicant's controlling persons were found, or pled guilty to fraud related to the operation of a PEO.
- 4. An applicant or registered PEO shall respond to any requests for information and comply with any investigations that are initiated by the Secretary of State.
- 5. An applicant or registered PEO shall notify the Secretary of State in writing within 10 days of the PEO's failure to stay current with obligations that relate to payroll, payroll-related taxes, workers' compensation insurance premiums for covered employees and employee benefits.

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

[R07-202]

PREAMBLE

- 1. Sections Affected**

R4-30-304	<u>Rulemaking Action</u>
Appendix A	Amend
Appendix B	Amend
	New Appendix
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the implementing statute (specific):**

Authorizing statute: A.R.S. § 32-106 (A)(1)
Implementing statute: A.R.S. § 32-125
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 13 A.A.R. 1532, April 27, 2007
Notice of Rulemaking Docket Opening: 13 A.A.R. 2170, June 22, 2007 (*in this issue*)
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: LaVern Douglas
Address: Board of Technical Registration
1110 W. Washington St., Ste. 240
Phoenix, AZ 85007
Telephone: (602) 364-4937
Fax: (602) 364-4931
E-mail: lavern.douglas@azbtr.gov
- 5. An explanation of the rule, including the agency's reasons for initiating the rulemaking:**

The Board has determined that requiring professional registrants to write or type or electronically generate the date that their current registration expires beneath their seal will assist registrants with renewing their registration in a timely fashion.
- 6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

None
- 7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable
- 8. The preliminary summary of the economic, small business, and consumer impact:**

There may be moderate economic impacts for those registrants who choose to purchase a new seal that complies with this rule change.
There are no significant economic impacts on other government agencies.
- 9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: LaVern Douglas
Address: Board of Technical Registration
1110 W. Washington St., Ste. 240
Phoenix, AZ 85007
Telephone: (602) 364-4937
Fax: (602) 364-4931

E-mail: lavern.douglas@azbtr.gov

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Written or oral comments will be accepted from 8:00 a.m. to 5:00 p.m., Monday through Friday, by mail at 1110 W. Washington St., Ste. 240, Phoenix, AZ 85007, facsimile at (602) 364-4931, or by e-mail at lavern.douglas@azbtr.gov for 30 days from the date it is published in the Secretary of State's *Register*. An oral proceeding is scheduled for Tuesday, July 24, 2007 at 9:30 a.m. at 1110 W. Washington St., Ste. 250, Phoenix, AZ 85007.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Any material incorporated by reference and its location in the rule:

None

13. The full text of the rule follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

ARTICLE 3. REGULATORY PROVISIONS

Section

R4-30-304. Use of Seals

Appendix A. Sample Seals

Appendix B. Sample Expiration Date Notification

ARTICLE 3. REGULATORY PROVISIONS

R4-30-304. Use of Seals

- A.** A registrant shall place a permanently legible imprint of the registrant's seal and signature on the following:
1. Each sheet of drawings or maps;
 2. Each of the master sheets when reproduced into a single set of finished drawings or maps;
 3. Either the cover, title, index, or table of contents page, or first sheet of each set of project specifications;
 4. Either the cover, index page, or first sheet of each addenda or change order to specifications;
 5. Either the cover, index page, or first sheet of bound details when prepared to supplement project drawings or maps;
 6. Either the cover, title, index, or table of contents page, or first sheet of any report, specification, or other professional document prepared by a registrant or the registrant's bona fide employee;
 7. The signature line of any letter or other professional document prepared by a registrant, or the registrant's bona fide employee; and
 8. Shop drawings that require professional services or work as described in the Act. Examples of shop drawings that do not require a seal include drawings that show only:
 - a. Sizing and dimensioning information for fabrication purposes;
 - b. Construction techniques or sequences;
 - c. Components with previous approvals or designed by the registrant of record; or
 - d. Modifications to existing installations that do not affect the original design parameters and do not require additional computations.
- B.** A registrant shall apply a label that describes the name of the project and an original imprint of the registrant's seal and signature on all video cassettes that contain copies of professional documents.
- C.** In the event that a copy of a professional document is provided to a client, regulatory body, or any other person for any reason by computer disk, tape, CD, or any other electronic form, and the document does not meet the requirements of subsection (D), the registrant shall mark the copy of the professional document:
"Electronic copy of final document; sealed original document is with (identify the registrant's name and registration number)."
- D.** A registrant shall sign, date, and seal a professional document:
1. Before the document is submitted to a client, contractor, any regulatory or review body, or any other person, unless the document is marked "preliminary," "draft," or "not for construction" except when the document is work product intended for use by other members of a design team; and
 2. In all cases, if the document is prepared for the purpose of dispute resolution, litigation, arbitration, or mediation.

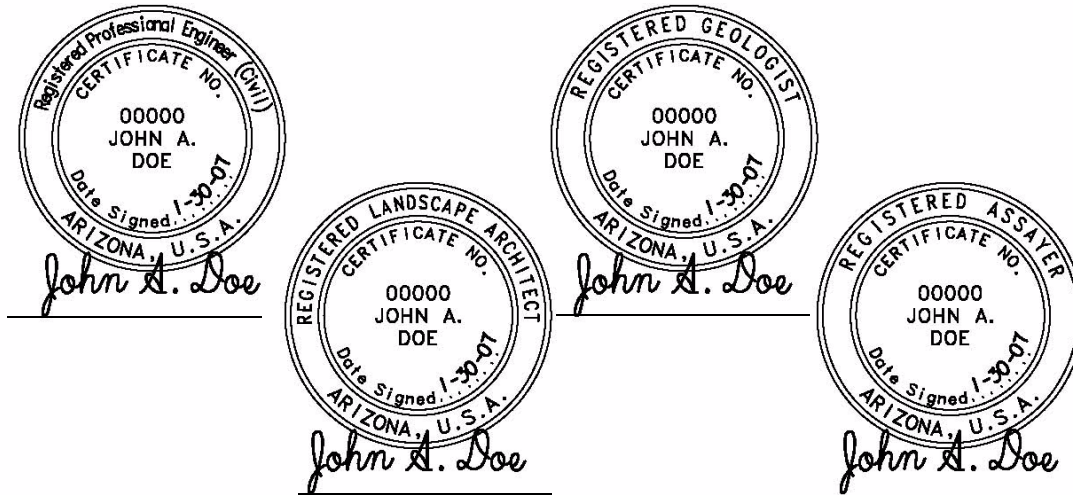
Notices of Proposed Rulemaking

- E. For purposes of subsection (A), all original documents shall include:
1. An original seal imprint or a computer-generated seal that matches the seal on file at the Board's office;
 2. An original signature that does not obscure either the registrant's printed name or registration number; ~~and~~
 3. The date the document was sealed; and
 4. A notation beneath the seal either written, typed or electronically generated that provides the day, month and year of expiration of current registration, as shown in Appendix B.
- F. Methods of transferring a seal other than an original seal imprint or a computer-generated seal are not acceptable.
- G. An electronic signature, as an option to a permanently legible signature, in accordance with A.R.S. Title 41 and Title 44, is acceptable for all professional documents. The registrant shall provide adequate security regarding the use of the seal and signature.

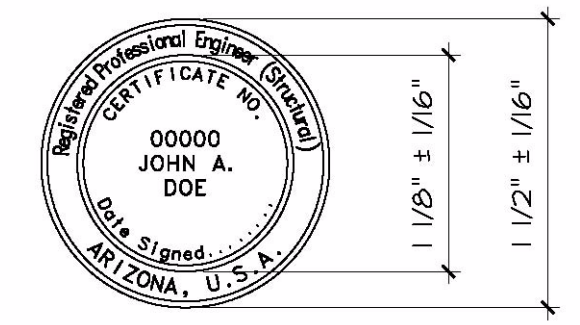
Appendix A. Sample Seals

SAMPLES:

Sign your name across lower portion of the seal. Do not cover your name or registration number with your signature.



**** ENGINEERS MUST LIST BRANCH – Agriculture, Architectural, Chemical, Civil, Control Systems, Electrical, Environmental, Fire Protection, Geological, Industrial, Mechanical, Metallurgical, Mining, Nuclear, Petroleum, Sanitary, or Structural.**



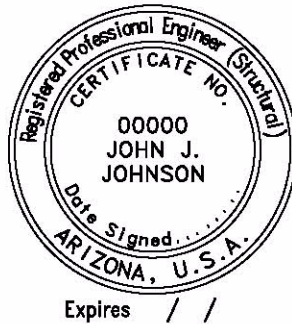
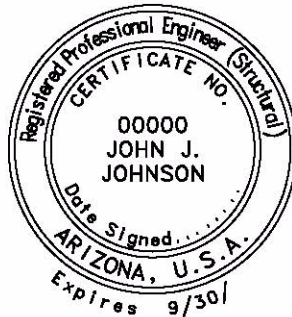
Outer circle should be 1 1/2 inches +/- 1/16 inches
Inner circle should be 1 1/8 inches +/- 1/16 inches

Arizona Administrative Register / Secretary of State
Notices of Proposed Rulemaking

Appendix B. Sample Expiration Date Notification

SAMPLES:

Type or handwrite the day, month, and year of registration expiration directly below the seal, as shown:



NOTICE OF PROPOSED RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

[R07-187]

PREAMBLE

1. Sections Affected

Article 12
R20-5-1201
R20-5-1202

Rulemaking Action

New Article
New Section
New Section

Notices of Proposed Rulemaking

R20-5-1203	New Section
R20-5-1204	New Section
R20-5-1205	New Section
R20-5-1206	New Section
R20-5-1207	New Section
R20-5-1208	New Section
R20-5-1209	New Section
R20-5-1210	New Section
R20-5-1211	New Section
R20-5-1212	New Section
R20-5-1213	New Section
R20-5-1214	New Section
R20-5-1215	New Section
R20-5-1216	New Section
R20-5-1217	New Section
R20-5-1218	New Section
R20-5-1219	New Section
R20-5-1220	New Section

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing Statute: A.R.S. § 23-364(A), as added by 2006 Proposition 202, § 2.

Implementing Statute: A.R.S. §§ 23-362, 23-363, 23-364(B) through (D), (F), and (G), as added by 2006 Proposition 202, § 2.

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 13 A.A.R. 873, March 16, 2007

Notice of Rulemaking Docket Opening: 13 A.A.R. 2173, June 22, 2007 (*in this issue*)

Notice of Emergency Rulemaking: 13 A.A.R. 473, February 16, 2007

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Nancy O. Johnson
Address: 800 W. Washington St., Ste. 303
Phoenix, AZ 85007
Telephone: (602) 542-5948
Fax: (602) 542-6783
E-mail: njohnson@ica.state.az.us

5. An explanation of the rule, including the agency's reasons for initiating the rule:

On November 7, 2006, the Arizona voters approved Proposition 202, referred to as the "Raise the Arizona Minimum Wage for Working Arizonans Act," ("Act"). On December 4, 2006, the Arizona Secretary of State certified the election results by signing the Official Canvas of the general election. Under A.R.S. § 23-364(A), which became effective January 1, 2007, the Industrial Commission of Arizona ("Commission") is given the authority to enforce and implement the Act. Emergency rules promulgated in response to direction in A.R.S. § 23-364(A) became effective on January 25, 2007. These rules will replace the emergency rules currently in effect and will:

- Define relevant terms and identify non-exclusive factors for determining an employment relationship;
- Provide criteria for the calculation of minimum wage, including the treatment of commissions and tips;
- Implement the posting and recordkeeping requirements of the Act by specifying where notices shall be posted and how, and what, records are required to be kept for different classes of employees (e.g. employees receiving tips, employees working on a fixed schedule, and salaried employees who are exempt under 29 CFR 541);
- Establish requirements for the filing of administrative complaints, including applicable deadlines for minimum wage complaints and complaints of retaliation;
- Address hearing procedures under the Act, including the right to request a hearing before a Commission Administrative Law Judge, the conduct of the hearing and the right to request review or rehearing;
- Address procedures for the collection of money, the assessment of civil penalties (including the assessment of penalties for engaging in conduct that hinders an investigation under the Act), and the informal resolution of disputes; and
- Provide a mechanism for a small employer (or class of small employers) to request relief from certain record-keeping requirements.

6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed

Notices of Proposed Rulemaking

rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

None

7. A showing of good cause why the rule is necessary to promote statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact statement:

Annual costs/revenues changes are designated as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when \$10,000 or greater in additional costs or revenues.

The ICA will bear moderate to substantial costs for promulgating and enforcing the rules. Costs for promulgating the rules include staff time to write, review, and direct the rules through the rulemaking process. The cost for enforcing the rules is difficult to ascertain at this time, but will include staff time to investigate complaints and to litigate challenges to decisions.

These rules were promulgated in response to direction in A.R.S. § 23-364(A). The cost to the public, including Arizona employers and employees, are based on directives in statute, and may be substantial. The rules merely provide the process to implement those directives. Directives in this new statute that may have a substantial cost to employers are:

- a. The increase in minimum wage,
- b. The fact that the minimum wage applies to all employees under the Act,
- c. Credit for board, lodging and other items are no longer allowed, and
- d. The assessment of civil penalties for violation of the Act.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Nancy O. Johnson
Address: 800 W. Washington St., Ste. 303
Phoenix, AZ 85007
Telephone: (602) 542-5948
Fax: (602) 542-6783
E-mail: njohnson@ica.state.az.us

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

The Industrial Commission of Arizona has scheduled an oral proceeding on the proposed rulemaking:

Date: Thursday, July 26, 2007
Location: 800 W. Washington St., Auditorium, 1st Fl.
Phoenix, AZ 85007
Time: 1:30 p.m.

The close of record is 5:00 p.m., Thursday, July 26, 2007

A person may also submit written comments on the proposed rules no later than 5:00 p.m., Thursday, July 26, 2007 to the individual listed in items 4 and 9.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. THE INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 12. ARIZONA MINIMUM WAGE ACT PRACTICE AND PROCEDURE

Notices of Proposed Rulemaking

Section

<u>R20-5-1201.</u>	<u>Notice of Rules</u>
<u>R20-5-1202.</u>	<u>Definitions</u>
<u>R20-5-1203.</u>	<u>Duty to Provide Current Address</u>
<u>R20-5-1204.</u>	<u>Forms Prescribed by the Department</u>
<u>R20-5-1205.</u>	<u>Determination of Employment Relationship</u>
<u>R20-5-1206.</u>	<u>Payment of Minimum Wage; Commissions; Tips</u>
<u>R20-5-1207.</u>	<u>Tip Credit Toward Minimum Wage</u>
<u>R20-5-1208.</u>	<u>Posting Requirements</u>
<u>R20-5-1209.</u>	<u>Records Availability</u>
<u>R20-5-1210.</u>	<u>General Recordkeeping Requirements</u>
<u>R20-5-1211.</u>	<u>Administrative Complaints</u>
<u>R20-5-1212.</u>	<u>Conduct that Hinders Investigation</u>
<u>R20-5-1213.</u>	<u>Findings and Order Issued by the Department</u>
<u>R20-5-1214.</u>	<u>Review of Department Findings and Order; Hearings; Issuance of Decision Upon Hearing</u>
<u>R20-5-1215.</u>	<u>Request for Rehearing or Review of Decision Upon Hearing</u>
<u>R20-5-1216.</u>	<u>Judicial Review of Decision Upon Hearing or Decision Upon Review</u>
<u>R20-5-1217.</u>	<u>Assessment of Civil Penalties Under A.R.S. § 23-364(F)</u>
<u>R20-5-1218.</u>	<u>Collection of Wages or Penalty Payments Owed</u>
<u>R20-5-1219.</u>	<u>Resolution of Disputes</u>
<u>R20-5-1220.</u>	<u>Small Employer Request for Exception to Recordkeeping Requirements</u>

ARTICLE 12. ARIZONA MINIMUM WAGE ACT PRACTICE AND PROCEDURE

R20-5-1201. Notice of Rules

- A.** This Article applies to all actions and proceedings before the Commission arising under the Raise the Arizona Minimum Wage for Working Arizonans Act, as added by 2006 Proposition 202, § 2.
- B.** The Commission shall provide a copy of this Article upon request to any person free of charge.

R20-5-1202. Definitions

In this Article, the definitions of A.R.S. § 23-362 (version two) apply. In addition, unless the context otherwise requires:

1. "Act" means the Raise the Arizona Minimum Wage for Working Arizonans Act, as added by 2006 Proposition 202, § 2.
2. "Affected employee" means an employee or employees on whose behalf a complaint may be filed alleging a violation under the Act.
3. "Authorized representative" means a person prescribed by law to act on behalf of a party who files with the Department a written instrument advising of the person's authority to act on behalf of the party.
4. "Casual Basis," when applied to babysitting services, means employment which is irregular or intermittent.
5. "Commission" means monetary compensation based on:
 - a. A percentage of total sales.
 - b. A percentage of sales in excess of a specified amount.
 - c. A fixed allowance per unit, or
 - d. Some other formula the employer and employee agrees as a measure of accomplishment.
6. "Complainant" means a person or organization filing an administrative complaint under the Act.
7. "Department" means the Labor Department of the Industrial Commission of Arizona or other authorized division of the Industrial Commission as designated by the Industrial Commission.
8. "Filing" means receipt of a report, document, instrument, videotape, audiotape, or other written matter at an office of the Department.
9. "Hours worked" means all hours for which an employee covered under the Act is employed and required to give to the employer, including all time during which an employee is on duty or at a prescribed work place and all time the employee is suffered or permitted to work.
10. "Minimum wage" means the lowest rate of monetary compensation required under the Act.
11. "Monetary compensation" means cash or its equivalent due to an employee by reason of employment.
12. "On duty" means time spent working or waiting that the employer controls and that the employee is not permitted to use for the employee's own purpose.
13. "Tip" means a sum a customer presents as a gift in recognition of some service performed, and includes gratuities. The sum may be in the form of cash, amounts paid by bank check or other negotiable instrument payable at par, or amounts the employer transfers to the employee under directions from a credit customer who designates an amount to be added to a bill as a tip. Gifts in forms other than cash or its equivalent as described in this definition, including theater tickets, passes, or merchandise, are not tips.

Notices of Proposed Rulemaking

14. "Violation" means a transgression of any statute or rule, or any part of a statute or rule, including both acts and omissions.
15. "Willfully" means acting with actual knowledge of the requirements of the Act or this Article, or acting with reckless disregard of the requirements of the Act or this Article.
16. "Workday" means any fixed period of 24 consecutive hours.
17. "Workweek" means any fixed and regularly recurring period of seven consecutive workdays.

R20-5-1203. Duty to Provide Current Address

- A.** A complainant shall provide and keep the Labor Department advised of the complainant's current mailing address and telephone number.
- B.** An employer under investigation by the Department shall provide and keep the Labor Department advised of the employer's current mailing address and telephone number.

R20-5-1204. Forms Prescribed by the Department

Forms prescribed by the Department, including the poster required under R20-5-1208, shall not be changed, amended, or otherwise altered without the prior written approval of the Department.

R20-5-1205. Determination of Employment Relationship

- A.** Determination of an employment relationship under the Act, which includes whether an individual is an independent contractor, shall be based upon the economic realities of the relationship. Consideration of whether an individual is economically dependent on the employer for which the individual performs work shall be determined by factors showing dependence, which non-exclusive factors shall include:
 1. The degree of control the alleged employer exercises over the individual;
 2. The individual's opportunity for profit or loss and the individual's investment in the business;
 3. The degree of skill required to perform the work;
 4. The permanence of the working relationship; and
 5. The extent to which the work performed is an integral part of the alleged employer's business.
- B.** An individual that works for another person without any express or implied compensation agreement is not an employee under the Act. This may include an individual that volunteers to work for civic, charitable, or humanitarian reasons that are offered freely and without direct or implied pressure or coercion from an employer, provided that the volunteer is not otherwise employed by the employer to perform the same type of services as those which the individual proposes to volunteer.
- C.** An individual that works for another individual as a babysitter on a casual basis and whose vocation is not babysitting, is not an employee under the Act even if the individual performs other household work not related to caring for the children, provided the household work does not exceed 20% of the total hours worked on the particular babysitting assignment.

R20-5-1206. Payment of Minimum Wage; Commissions; Tips

- A.** Subject to the requirements of the Act and this Article, no less than the minimum wage shall be paid for all hours worked, regardless of the frequency of payment and regardless of whether the wage is paid on an hourly, salaried, commissioned, piece rate, or any other basis.
- B.** If, in any workweek, the combined wages of an employee is less than the applicable minimum wage, the employer shall pay, in addition to monetary compensation already earned, no less than the difference between the amounts earned and the minimum wage as required under the Act.
- C.** The workweek is the basis for determining an employee's hourly wage. Upon hire, an employer shall advise the employee of the employee's designated workweek. Once established, an employer shall not change or manipulate an employee's workweek to evade the requirements of the Act.
- D.** In computing the minimum wage, an employer shall consider only monetary compensation and shall count tips and commissions in the workweek in which the tip or commission is earned.
- E.** An employer is allowed to:
 1. Require or permit employees to pool, share, or split tips, and
 2. Require an employee to report tips to the employer in order to meet reporting requirements of this Article and federal law.

R20-5-1207. Tip Credit Toward Minimum Wage

- A.** In this Section, unless the context otherwise requires, "customarily and regularly" means receiving tips on a consistent and recurrent basis, the frequency of which may be greater than occasional, but less than constant, and includes the occupations of waiter, waitress, bellhop, busboy, car wash attendant, hairdresser, barber, valet, and service bartender.
- B.** For purposes of calculating the permissible credit for tips under A.R.S. § 23-363(C), the following applies:
 1. Tips are customarily and regularly received in the occupation in which the employee is engaged;
 2. Except as provided in R20-5-1206(E), the employee actually receives the tip free of employer control as to how the employee uses the tip and the tip becomes the employee's property;

Notices of Proposed Rulemaking

3. Employees who customarily and regularly receive tips may pool, share, or split tips between them, and the amount each employee actually retains is considered the tip of the employee who retains it;
 4. Employer-required sharing of tips with employees who do not customarily and regularly receive tips in the occupation in which the employee is engaged, including management or food preparers, are not credited toward that employee's minimum wage; and
 5. A compulsory charge for service imposed on a customer by an employer's establishment are not credited toward an employee's minimum wage unless the employer actually distributes the charge to the employee in the pay period in which the charge is earned.
- C. Upon hiring or assigning an individual to a position that customarily and regularly receives tips, an employer intending to exercise a tip credit shall provide written notice to the employee prior to exercising the tip credit. Thereafter, the employer shall notify the employee in writing each pay period of the amount per hour that the employer takes as a tip credit.

R20-5-1208. Posting Requirements

Every employer subject to the Act shall place a poster prescribed by the Department informing employees of their rights under the Act in a conspicuous place in every establishment where employees are employed and where notices to employees are customarily placed. The employer shall ensure that the notice is not removed, altered, defaced, or covered by other material.

R20-5-1209. Records Availability

- A. Each employer shall keep the records required under the Act and this Article safe and accessible at the place or places of employment, or at one or more established central recordkeeping offices where the records are customarily maintained. When the employer maintains the records at a central recordkeeping office other than in the place or places of employment, the employer shall make the records available to the Department within 72 hours following notice from the Department.
- B. Employers who use microfilm or another method for recordkeeping purposes shall make available to the Department any equipment that is necessary to facilitate inspection and copying of the records.
- C. Each employer required to maintain records under the Act and this Article shall make, as the Department may request in writing, enlargement, recomputation, or transcription of the records and shall submit to the Department the records or reports in a readable format.

R20-5-1210. General Recordkeeping Requirements

- A. Payroll records required to be kept under the Act include:
1. All time and earning cards or sheets on which are entered the daily starting and stopping time of individual employees, or of separate work forces, or the amounts of work accomplished by individual employees on a daily, weekly, or pay period basis (for example, units produced) when those amounts determine in whole or in part the pay period wages of those employees;
 2. From their last effective date, all wage-rate tables or schedules of the employer that provide the piece rates or other rates used in computing wages; and
 3. Records of additions to or deductions from wages paid and records that support or corroborate the additions or deductions.
- B. Except as otherwise provided in this Section, every employer shall maintain and preserve payroll or other records containing the following information and data with respect to each employee to whom the Act applies:
1. Name in full, and on the same record, the employee's identifying symbol or number if it is used in place of the employee's name on any time, work, or payroll record;
 2. Home address, including zip code;
 3. Date of birth, if under 19;
 4. Occupation in which employed;
 5. Time of day and day of week on which the employee's workweek begins. If the employee is part of a workforce or employed in or by an establishment all of whose workers have a workweek beginning at the same time on the same day, then a single notation of the time of the day and beginning day of the workweek for the whole workforce or establishment is permitted;
 6. Regular hourly rate of pay for any workweek and an explanation of the basis of pay by indicating the monetary amount paid on a per hour, per day, per week, per piece, commission on sales, or other basis, including the amount and nature of each payment;
 7. Hours worked each workday and total hours worked each workweek;
 8. Total daily or weekly straight-time wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation;
 9. Total premium pay for overtime hours and an explanation of how the premium pay was calculated exclusive of straight-time wages for overtime hours recorded under subsection (B)(8) of this Section;
 10. Total additions to or deductions from wages paid each pay period including employee purchase orders or wage assignments, including, for individual employee records, the dates, amounts, and nature of the items that make up the

total additions and deductions;

11. Total wages paid each pay period; and

12. Date of payment and the pay period covered by payment.

C. For an employee who is compensated on a salary basis at a rate that exceeds the minimum wage required under the Act and who, under 29 CFR 541, is an exempt bona fide executive, administrative, or professional employee, including an employee employed in the capacity of academic administrative personnel or teachers in elementary or secondary schools, or in outside sales, an employer shall maintain and preserve:

1. Records containing the information and data required under subsections B(1) through (B)(5), (B)(11) and (B)(12) of this Section; and

2. Records containing the basis on which wages are paid in sufficient detail to permit a determination or calculation of whether the salary received exceeds the minimum wage required under the Act, including a record of the hours upon which payment of the salary is based, whether full time or part time.

D. With respect to employees working on fixed schedules, an employer may maintain records showing instead of the hours worked each day and each workweek as required under this Section, the schedule of daily and weekly hours the employee normally works, provided:

1. In weeks in which an employee adheres to this schedule, the employer indicates by check mark, statement, or other method, that the employee actually worked the hours; and

2. In weeks in which more or fewer than the scheduled hours are worked, the employer records the number of hours actually worked each day and each week.

E. With respect to an employee that customarily and regularly receives tips, the employer shall ensure that the records required under this Article include the following information:

1. A symbol, letter, or other notation placed on the pay records identifying each employee whose wage is determined in part by tips;

2. Amount of tips the employee reports to the employer;

3. The hourly wage of each tipped employee after taking into consideration the employee's tips;

4. Hours worked each workday in any occupation in which the employee does not receive tips, and total daily or week straight-time payment made by the employer for the hours;

5. Hours worked each workday in occupations in which the employee receives tips and total daily or weekly straight-time wages for the hours; and

6. Copy of the notice required under R20-5-1208.

E. An employer who makes retroactive payment of wages, whether done voluntarily or as otherwise ordered to do so, shall record and preserve, as an entry on the pay records, the amount of the payment to each employee, the period covered by the payment, and the date of payment.

R20-5-1211. Administrative Complaints

A. A person or organization alleging a minimum wage violation, shall file a complaint with the Labor Department within one year from the date the wages were due.

B. A person or organization alleging retaliation shall file a complaint with the Labor Department within one year from the date the alleged violation occurred or when the employee knew or should have known of the alleged violation.

C. The person or organization filing a complaint with the Labor Department shall sign the complaint.

D. Any person or organization other than an affected employee who files a complaint shall include the names of affected employees.

E. For good cause, and upon its own complaint, the Department may investigate violations under the Act.

R20-5-1212. Conduct that Hinders Investigation

An employer hinders an investigation under the Act if the employer engages in conduct, or causes another person to engage in conduct, that delays or otherwise interferes with the Department's investigation, including:

1. Obstructing or refusing to admit the Department to any place of employment authorized under the Act;

2. Obstructing or refusing to permit interviews authorized under the Act;

3. Failing to make, keep, or preserve records required under the Act or this Article;

4. Failing to permit the review and copying of records required under the Act and this Article; and

5. Falsifying any record required under the Act or this Article.

R20-5-1213. Findings and Order Issued by the Department

A. Except as provided in R20-5-1219, after receipt of a complaint alleging a violation of the minimum wage requirement of the Act, or alleging retaliation under the Act, the Department shall issue a Findings and Order of its determination. The Department shall send its Findings and Order to both the employer and the complainant at their last known addresses served personally or by regular first class mail. If the complaint named affected employees, the Department may send a copy of its Findings and Order to the affected employees.

B. If the Department determines that an employer has violated the minimum wage payment requirement, the Department

Notices of Proposed Rulemaking

shall order the employer to pay the employee, or if applicable, affected employees, the balance of the wages owed, including interest at the legal rate and an additional amount equal to twice the underpaid wages.

- C. If the Department determines that a retaliation violation has occurred, the Department shall direct the employer or other person to cease and desist from the violation and take any action deemed necessary to remedy the violation, including where appropriate for each employee, or if applicable, affected employees:
1. Rehiring or reinstatement;
 2. Reimbursement of lost wages and interest;
 3. Payment of penalty to employees or affected employees as provided for in the Act and this Article; and
 4. Posting of notices to employees.
- D. If the Department determines that no retaliation has occurred the Department shall notify the parties and shall dismiss the complaint without prejudice. The complainant may, after notification of the Department's determination, bring a civil action under A.R.S. § 23-364(E).
- E. The Department may assess civil penalties for recordkeeping, posting, and other violations under the Act and this Article as part of a Findings and Order issued under subsection (A) or they may be assessed as a separate Findings and Order. If issued as a separate Findings and Order, the Department shall send the Findings and Order to both the employer and the complainant, in the event a complaint has been filed, to their last known addresses served personally or by regular first class mail.
- F. The Director of the Department shall sign the written Findings and Order issued by the Department.
- G. If an employer does not comply with a Findings and Order issued by the Department within 10 days following finality of the Findings and Order, the Department may refer the matter to a law enforcement officer.

R20-5-1214. Review of Department Findings and Order; Hearings; Issuance of Decision Upon Hearing

- A. Except as provided in R20-5-1213(D), a party aggrieved by a Findings and Order issued by the Department may request a hearing by filing a written request for hearing with the Department within 30 days after the Findings and Order is served upon the party. Failure to timely file a request for hearing means that the Findings and Order issued by the Department is final and res judicata to all parties.
- B. A request for hearing shall be in writing and contain:
1. The name and address of the party requesting the hearing;
 2. The signature of the party or the party's authorized representative; and
 3. A statement that a hearing is requested.
- C. Upon receipt of a timely filed request for hearing, the Department shall refer the matter to the Administrative Law Judge Division of the Commission for hearing.
- D. Except as otherwise provided in this Section, the hearing shall be conducted under A.R.S. § 41-1061 et seq.
- E. A person submitting correspondence or other documents, including subpoena requests, to an administrative law judge concerning a matter pending before the administrative law judge, shall contemporaneously serve a copy of the correspondence or other document upon all other parties, or if represented, the parties' authorized representative.
- F. The administrative law judge may dismiss a request for hearing when it appears to the judge's satisfaction that the parties have resolved the disputed issue or issues.
- G. The administrative law judge shall issue a written decision upon hearing containing findings of fact and conclusions of law no later than 30 days after the matter is submitted for decision. The decision shall be sent to the parties at their last known addresses served personally or by regular first class mail.
- H. A decision issued under this Section is final when entered unless a party files a request for rehearing or review as provided in R20-5-1215 or commences an action in the Superior Court as provided in R20-5-1216 and A.R.S. § 12-901 et seq. The decision shall contain a statement explaining the review rights of a party.

R20-5-1215. Request for Rehearing or Review of Decision Upon Hearing

- A. A party may request rehearing or review of a decision issued under R20-5-1214 by filing with the Administrative Law Judge a written request for rehearing or review no later than 15 days after the written decision is mailed to or served upon the parties.
- B. A request for rehearing or review shall be based upon one or more of the following grounds that have materially affected the rights of a party:
1. Irregularities in the hearing proceeding or any order, or abuse of discretion that deprives a party seeking review of a fair hearing;
 2. Accident or surprise that could not have been prevented by ordinary prudence;
 3. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the hearing;
 4. Error in the admission or rejection of evidence, or errors of law occurring at, or during the course of, the hearing;
 5. Bias or prejudice of the Department or administrative law judge; and
 6. The findings of fact or conclusions of law contained in the decision are not justified by the evidence or are contrary to

law.

- C. A request for rehearing or review shall state the specific facts and law in support of the request and shall specify the relief sought by the request.
- D. A party shall have 15 days from the date of the filing of a request for rehearing or review to file a written response. Failure to respond shall not be deemed an admission against interest.
- E. The administrative law judge shall issue a decision upon review no later than 30 days after receiving a request for review or response, if one is filed.
- F. A decision upon review is final unless a party seeks judicial review as provided in R20-5- 1216.

R20-5-1216. Judicial Review of Decision Upon Hearing or Decision Upon Review

- A. A party aggrieved by a decision upon hearing issued under R20-5-1214 or a decision upon review issued under R20-5-1215 may seek review by commencing an action in the Superior Court as provided in A.R.S. § 12-901 et seq. within 35 days from the date a copy of the decision sought to be reviewed is mailed to or served upon the party affected.
- B. A decision upon hearing issued under R20-5-1214 or a decision upon review issued under R20-5-1215 is final unless a party seeks judicial review as provided under A.R.S. § 12-901 et seq.

R20-5-1217. Assessment of Civil Penalties Under A.R.S. § 23-364(F)

The Department may assess civil penalties for violations of the Act and this Article, including the assessment of civil penalties for engaging in conduct that hinders an investigation of the Department as specified in R20-5-1212.

R20-5-1218. Collection of Wages or Penalty Payments Owed

- A. Upon determination that wages or penalty payments are due and unpaid to any employee, the employee may, or the Department may on behalf of an employee, obtain judgment and execution, garnishment, attachment, or other available remedies for collection of unpaid wages and penalty payments established by a final Findings and Order of the Department.
- B. If payment cannot be made to the employee, the Department shall receive monetary compensation or penalty payments on behalf of the employee and transmit monies it receives as payment in a special state fund as provided in A.R.S. § 23-356(C).
- C. The Department may amend a Findings and Order to conform to the legal name of the business or the person who is the defendant employer to a complaint under the Act, provided it can be shown that proper service of the Findings and Order was made on the defendant or the defendant's agent, unless a judgment has been entered on the order in which case the Department may apply to the clerk of the superior court to amend a judgment that has been issued under a final order, provided it can be shown that proper service was made on the defendant or the defendant's agent.

R20-5-1219. Resolution of Disputes

Notwithstanding any other provision of law, the Department may mediate and conciliate a dispute between the parties.

R20-5-1220. Small Employer Request for Exception to Recordkeeping Requirements

- A. In this Section, unless context otherwise requires, "small employer" means a corporation, proprietorship, partnership, joint venture, limited liability company, trust, or association that has less than \$500,000 in gross annual revenue.
- B. A small employer, or any category of small employer that is unreasonably burdened by the recordkeeping requirements of the Act and this Article may file a written petition for exception with the Department requesting relief from certain recordkeeping requirements under this Article. The petition shall:
 - 1. State the reasons for the request for relief;
 - 2. State an alternate manner or method of making, keeping, and preserving records that will enable the Department to determine hours worked and wages paid; and
 - 3. Include the signature of the employer or an authorized representative of the employer.
- C. Subject to any conditions or limitations necessary to ensure fulfillment of the purpose and intent of Act, the Department may grant a petition for exception if it finds that:
 - 1. The small employer, or category of small employer is unreasonably burdened by the recordkeeping requirements of the Act and this Article; and
 - 2. The relief requested and alternative proposed will not hinder the Department's enforcement of the Act and this Article.
- D. For good cause, the Department may rescind a prior order granting relief under this Section.
- E. Relief under this Section is effective upon the Department's written authorization.